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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

No. 84-822

AMERICAN NATIONAL BANK AND TRUST CO. OF CHICAGO,
A National Banking Association,
Walter E. Heller International Corporation,
and Ronald J. Grayheck

PETITIONER,

v.

HAROCO, INC., A Corporation,
Roman Ceramics, Inc., A Corporation,
California Originals, Inc., A Corporation,
and Mike Wayne Distilled Products Co., A Corporation

RESPONDENT.

On Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

BRIEF FOR AMICI CURIAE
IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE

This brief is submitted on behalf of the States of Arizona, Alaska, California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York*, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.**

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*The State of New York wishes to express its support for the positions expressed by Amici without formally joining on the brief.

**The assistance in the preparation of this brief of Professor G. Robert Blakey of the Notre Dame Law School and Blake A. Bailey (Notre Dame '86), Thomas F. Merrick (Notre Dame '86), Christine M. North (Notre Dame '85), Maryellen O'Neil (Notre Dame '86), Donald H. Passenger (Notre Dame '86), Olga F. Pribyl (Notre Dame '85), David C. Scheper (Notre Dame '85), Beth A. Schneider (Notre Dame '86), and Louis J. Weber III (Notre Dame '85), is hereby acknowledged.

In 1970, Congress enacted the Organized Crime Control Act, Title IX of which is known as "RICO." Since 1970, twenty-two states, including Arizona, have followed Congress' lead by adopting similar legislation.[1] The states have employed this legislation in criminal prosecutions against a wide variety of illegal conduct.[2] Additionally, both state governments and private plaintiffs have used it in civil litigation.[3] Federal RICO decisions have played a vital role in interpreting and upholding analogous state RICO legislation.[4]

Distressingly, however, recent decisions by the lower federal courts manifest a distinct hostility toward the use of civil RICO.[5] State civil RICO defendants are using these decisions to challenge the state legislation and to urge the narrowing of its scope.[6] In the context of federal litigation

[1] See Appendix A for the text of Federal RICO, citations of the state statutes, and a comprehensive comparison of the federal and state legislation. See Appendix B for a resolution of the National Association of Attorneys General.

[2] *See, e.g., Carlson v. State,* 405 So. 2d 173, 174 (Fla. 1981) (house of ill fame); *Dorsey v. State,* 402 So. 2d 1178, 1180 (Fla. 1981) (drugs); *State v. Whiddon,* 384 So. 2d 1269, 1270 (Fla. 1980) (theft, burglary, arson, and arson to defraud); *Moorehead v. State,* 383 So. 2d 629, 630-31 (Fla. 1980) (auto theft).

[3] *See, e.g., Arizona ex rel. Corbin v. Pickrell,* 136 Ariz. 589, 591, 667 P. 2d 1304, 1306 (1983) (securities fraud); *Banderas v. Banco Central del Ecuador,* 461 So. 2d 265 (Fla. Dist. Ct. App. 1985) (foreign exchange fraud).

[4] *See, e.g., Baines v. Superior Court,* 688 P. 2d 1037, 1040 (Ariz. Ct. App. 1984) ("[i]n the absence of any Arizona cases, we will look to federal decisional law for guidance"); *Roush v. State,* 413 So. 2d 15, 20-21 (Fla. 1982) (constitutionality of RICO-type civil remedies upheld relying on federal decisions); *Moorehead v. State,* 383 So. 2d at 630-31 (constitutionality of "pattern" in Fla. RICO statute upheld relying on federal decisions.)

[5] *See generally* Horn, *Judicial Plague Sweeps United States 'Resultorientitis' Infects Civil RICO Decisions,* 5 Nat'l L. J., May 23, 1983, at 31, col. 1.

[6] *See, e.g., Arizona ex rel. Corbin v. Pickrell,* 136 Ariz. at 596, 667 P. 2d at 1311 (distinct injury limitation rejected, but urged based on

with pendent state claims, federal courts are also unjustifiably reading limitations into state legislation not intended by the state legislature, threatening to frustrate the legislative design.[7] Amici view these developments as ominous because they threaten the exercise of state sovereignty. A court is "not at liberty to imply . . . condition[s] which . . . [are] opposed to the explicit terms of . . . [a] statute . . .. To [so] hold . . . is not to construe the . . . [statute] but to amend it." *Fedorenko v. United States,* 449 U.S. 490, 513 (1981) (quoting *Detroit Trust Co. v. The Thomas Barlum,* 293 U.S. 21, 38 (1934)). Accordingly, Amici urge this Court to set its hand firmly against these unconstitutional encroachments of Article I legislative power by Article III courts.

STATEMENT

For the statement of the facts and course of legal proceedings below, the Court is respectfully directed to the briefs of the parties.

federal decisions); *Banderas,* 461 So. 2d at 270 (organized crime limitation rejected; "garden variety" fraud exclusion rejected, but urged, citing *Sedima, S.P.R.L. v. Imrex, Inc.,* 741 F.2d 482 (2d Cir. 1984)).

[7] *See, e.g., Plains Resources, Inc. v. Gable,* Civil No. 83-JM-2145, slip op. at 3-5, (D. Colo. 1984) (organized crime limitation read into federal and Colorado RICO statutes), *appeal pending; Divco Construction & Realty Corp. v. Merrill Lynch Pierce Fenner & Smith, Inc.,* 575 F. Supp. 712, 714 (S.D. Fla. 1983) (organized crime limitation read into federal and Florida RICO statutes in securities fraud area).

The judicial hostility seems to be related to the presence of treble damages, which the courts mistakenly construe to be penal. *See, e.g., Saine v. A.I.A., Inc.,* 582 F. Supp. 1299, 1305 (D. Colo. 1984). The multiple damage provisions in federal and state RICO, however, embody the "complete compensation" theory adopted by this Court in *United States v. Bornstein,* 423 U.S. 303, 313-317 (1976) for the multiple damages provisions of the False Claim Act, 31 U.S.C. § 231 (1982). *See generally* Georing, *The Characterization of Treble Damages: Conflict Between a Hybrid Mode of Recovery and a Jurisprudence of Labels,* 1 Materials on RICO 428 (Cornell Institute on Organized Crime (1980)). Indeed, some state RICO legislation provides for the recovery of both treble *and* punitive damages. *See, e.g., Banderas,* 461 So. 2d at 267 (award upheld of

One issue is presented:

> Is a private plaintiff's right to recover under civil RICO conditioned on a showing of distinct injury? (no)

Amici have also filed a brief that addresses other issues and related considerations in behalf of petitioners in *Sedima, S.P.R.L. v. Imrex Co., Inc.*, No. 84-648. The Court is respectfully referred to that brief for those arguments.

SUMMARY OF ARGUMENT

In 1970, Congress enacted the Organized Crime Control Act, Title IX of which is known as "RICO." Neither the Organized Crime Control Act generally, nor Title IX particularly, was limited to organized crime. RICO provides for criminal and civil sanctions. Nothing in the text, legislative history, or purpose of RICO, justifies circumscribing its private civil remedies with a distinct injury limitation.

ARGUMENT

I. RICO DOES NOT REQUIRE A SHOWING OF DISTINCT INJURY AS A PREREQUISITE FOR A PRIVATE CIVIL SUIT.

In 1970, Congress enacted the Organized Crime Control Act, Title IX of which is known as "RICO;" it is codified at 18 U.S.C. § 1964.[8] *Sedima, S.P.R.L. v. Imrex Co., Inc.*,

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treble and punitive damages under Florida RICO). *See also* S. Rep. No. 307, 97th Cong., 1st Sess. 1273 (1981) ("adequate relief or compensation is the main goal").

[8] *See generally* Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 Notre Dame L. Rev. 237 (1982) (hereinafter *Civil Action*); Blakey and Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts — Criminal and Civil Remedies*, 53 Temp. L. Q. 1009 (1980) (hereinafter *Basic Concepts*); Note,

741 F.2d 482, 495-96 (2d Cir. 1984) imposed a "mobster" harm limitation on private claims for relief under 18 U.S.C. § 1964(c). Its companion decision, *Bankers Trust Co. v. Rhoades*, 741 F.2d 511, 517 (2d Cir. 1984), imposed a "RICO injury" limitation on private claims for relief. *Haroco, Inc. v. American National Bank and Trust Co.*, 747 F.2d 384, 393-395 (7th Cir. 1984) rejected both articulations of the distinct injury limitation. Amici urge this Court to adopt the well-reasoned opinion of the Seventh Circuit on this issue.[9]

The text of 18 U.S.C. § 1964(c) as modified by the Second Circuit would read:

> Any person injured in his business or property by reason of a violation of Section 1962 of this chapter

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Civil RICO: The Temptation and Impropriety of Judicial Restriction, 95 Harv. L. Rev. 1101 (1982).

[9] *Haroco* followed, however, the ill-advised rule adopted by some courts under 18 U.S.C. § 1962(c) that precludes holding an "enterprise" criminally or civilly responsible under general theories of *respondeat superior* or agency for the conduct of a "person" "employed by or associated with" it. 747 F.2d at 399-403. *But see Civil Action* at 286-325. Faced with the unattractive prospect that a "guilty enterprise" might, therefore, escape criminal or civil sanctions, the court developed an alternative theory of responsibility under 18 U.S.C. § 1962(a). Unfortunately, that theory fails to reach an enterprise that is *not* run for profit (a union) or a pattern of racketeering activity that does *not* produce income (murder), where it *might* be appropriate under the *express* text of 18 U.S.C. § 1963(a) to order "dissolution or reorganization of any enterprise." Unless such an enterprise is made a defendant, it is difficult to see how it could be dissolved or reorganized. Accordingly, *United States v. Hartley*, 678 F.2d 961, 984-90 (11th Cir. 1982), *cert. denied*, 459 U.S. 1170 (1983) followed an approach that is more consistent with RICO's text and purpose. Eventually, this Court will have to resolve this split in the circuits.

> *of a mobster-type or distinct from any injury sustained from the commission of any racketeering activity* may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee. (emphasis added to alternative new text).

Since the text of the statute governs, *Russello v. United States,* 104 S. Ct. 296, 299 (1983) (quoting *United States v. Turkette,* 452 U.S. 576, 580 (1981), it is sufficient to note that the "short answer [to the Second Circuit's position] is that Congress did not write the statute that way." *Id.* at 300 quoting *United States v. Naftalin,* 441 U.S. 768, 773-74 (1979)).[10]

The first effort to narrow RICO involved reading into it an "organized crime" limitation to circumscribe the class of defendants under the statute. *See, e.g., Barr v. WUI/TAS,*

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[10] Congress passed the Sherman Act in 1890, yet it was not until recent times that the private enforcement mechanism of the antitrust statutes came into its own. The thrust of scholarly analysis of the Act's history places that disuse at the door of "judicial hostility." Sullivan, *Breaking up the Treble Play: Attacks on the Private Treble Damage Antitrust Action,* 14 Seton Hall L. Rev., 17, 19 (1983). Advances occurred after the New Deal, but the private enforcement mechanism came into its own only after key decisions of this Court in the 1950's. *See, e.g., Klor's, Inc. v. Broadway-Hale Stores,* 359 U.S. 207, 211 (1959). Running parallel with the deep judicial hositility reflected in the adoption of the distinct injury limitation are the special pleading rules unjustifiably imposed on RICO litigants. *See Haroco,* 747 F.2d at 403-05 (rules rejected). A similar, but unsuccessful effort was made to so treat antitrust litigants, despite the liberalization of the Federal Rules in 1938. 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1221 at 149 (1969). *See, e.g., Poller v. Columbia Broadcasting System,* 368 U.S. 464, 473 (1962). The developing historical parallels between the enforcement of the antitrust laws and RICO are disturbing. *But see* G. Hegel, *Philosophy of History* 6 (rev. ed. 1900) ("What experience and history teach us is this — that people and governments have never learned anything from history.").

Inc., 66 F.R.D. 109, 113 (S.D.N.Y. 1975). Because that limitation had no support in the text of the statute, and because it had been specifically rejected in the legislative debates, the Second, Fifth, Seventh, and Eighth Circuits quickly rejected it. *Alcorn County, Miss. v. U.S. Interstate Supplies, Inc.,* 731 F.2d 1160, 1167 (5th Cir. 1984) (cases cited and followed). The other efforts have, in fact, been little more than surreptitious attempts to bring the organized crime limitation in the back door after the front door was slammed shut. *Schacht v. Brown,* 711 F.2d 1343, 1356 (7th Cir.) ("revived under . . . [a new] guise"), *cert. denied,* 104 S. Ct. 508 (1983).

Another effort involved reading a "competitive injury" limitation into civil RICO to circumscribe the class of injuries for which victims could obtain relief under the statute. *See, e.g., North Barrington Development, Inc. v. Fanslow,* 547 F. Supp. 207, 211 (N.D. Ill. 1980). The Seventh and Eighth Circuits rejected this effort. *Schacht v. Brown,* 711 F.2d at 1356-58; *Bennett v. Berg,* 685 F.2d 1053, 1058-59 (1982), *aff'd en banc,* 710 F.2d 1361 (8th Cir. 1983), *cert. denied,* 104 S. Ct. 527 (1983).

The only effort gaining more than minimal acceptance in the lower courts has been the attempt to read a "racketeering enterprise injury" limitation into the statute. This limitation, like the competitive injury limitation, would circumscribe the class of injuries for which victims could obtain relief under the statute. The limitation first appeared in *Landmark Savings and Loan v. Rhoades,* 527 F. Supp. 206, 208-09 (E.D. Mich. 1981). Largely because the racketeering enterprise injury limitation lacked textual support, courts soon interpreted the "by reason of" language of Section 1964 as requiring a distinct injury. *See, e.g., Harper v. New Japan Securities International, Inc.,* 545 F. Supp. 1002, 1007-08 (C.D. Cal. 1982) ("the most meaningful limitation"). Each of these efforts attempts to narrow the scope

of civil RICO by requiring that a plaintiff show "something more" than the injury suffered from the racketeering acts. *Willamette Savings & Loan v. Blake & Neal Finance Co.*, 577 F. Supp. 1415, 1428 (D. Ore. 1984).

Courts offer a number of arguments to justify this rewriting of RICO. It is suggested, for example, that this reading of RICO is warranted by its similarity to Section 4 of the Clayton Act (15 U.S.C. § 4 (1982)). *See, e.g., Landmark Savings & Loan v. Rhoades,* 527 F. Supp. at 208. *But see Local 1976, United Brotherhood of Carpenters v. N.L.R.B.*, 357 U.S. 93, 110 (1958) ("a determination under one statute [should not] be mechanically carried over in the interpretation of another statute involving significantly different considerations and legislative purposes.") Like other courts, *Landmark* relied on *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977). *Brunswick,* however, held that the plaintiff's injury must have *a* relationship to the Section 4 violation; it did not hold that the injury had to be *distinct*. In fact, the distinct injury limitation bears a closer resemblance to the public injury limitation that this Court rejected under the antitrust statutes, holding that imposing such a limitation was a decision for the Congress, not the judiciary. *Klor's Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 211 (1959). "By reason of" in Section 4, of course, requires actual, not distinct, injury. *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557, 561-63 (1981). "By reason of" merely means "proximate cause." *Commerce Tankers Corp. v. National Maritime Union of America,* 553 F.2d 793, 800-01 (2d Cir.), *cert. denied,* 434 U.S. 923 (1977).

To the degree that this Court's decisions with regard to standing under the antitrust laws have any relevance in analyzing RICO, it is *Associated General Contractors of California, Inc. v. California State Council of Carpenters,* 459 U.S. 519, 531 n.31, 545-46 (1983) that ought to be examined. In *Associated General Contractors,* this Court noted the

basic factors to consider in determining who had standing to bring an antitrust claim for particular kinds of injury. *See also Blue Shield of Virginia v. McCready,* 457 U.S. 465, 472 (1982). Neither *Sedima's* nor *Bankers Trust's* approach is consistent with the teaching of *Associated General Contractors*. Their holdings should be rejected.

Associated General Contractors makes another crucial point by suggesting that the language of Section 4 of the Clayton Act might not be "as broad as its words suggest" because "Congress [did not] intend[] such an open-ended meaning." 459 U.S. at 529-30. By contrast, Congress directed the courts to construe RICO liberally. 84 Stat. 947 (1970) ("The provisions of . . . [RICO] shall be liberally construed to effectuate its remedial purposes.").[11] Congress also specifically rejected in its debates the very standing jurisprudence that courts had developed under the antitrust statutes and that the defendants in these cases wish to use to restrict RICO's plain meaning. *See Civil Action, supra* note 8, at 253-56 (statements of Sen. Hruska reviewed); 263

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[11] On the relation between the rule of lenity and RICO's liberal construction directive, *see Civil Action* at 245 n.25, 288 n.150. Contrary to the assumption of *Sedima,* 741 F.2d at 502-03, and Petitioners' argument, *Brief of Petitioners* at 22-24, the rule of lenity in criminal prosecutions is a rule of statutory construction, not a requirement of due process; Congress, therefore, may set the rule aside and mandate liberal construction in civil *and* criminal cases. *See Tarrant v. Ponte,* 751 F.2d 459, 466 (1st Cir. 1985). Reflecting their hostility toward private civil RICO claims, district courts are, however, improperly limiting the application of the liberal construction directive to criminal prosecutions. *See, e.g., Berg v. First American Bank Shares, Inc.*, 599 F. Supp. 500, 506 (D.D.C. 1984) ("The broad construction given RICO in criminal prosecutions is simply inconsistent with the narrower construction which must be applied in the context of a civil case."). This Court's decision in *Federal Communications Commission v. American Broadcasting Co.*, 347 U.S. 284, 296 (1954), cited in *Brief of Petitioners* at 24, does not dictate strict construction in light of *Mourning v. Family Publications Serv., Inc.*, 411 U.S. 356, 374-75 (1973). *See Civil Action* at 266 n.88.

n.72 (statements of Sen. McClellan reviewed). Accordingly, analogizing to antitrust standing concepts for the purpose of rewriting RICO is inappropriate. *Schacht v. Brown,* 711 F.2d at 1357-58; *Bennett v. Berg,* 685 F.2d at 1058-59.

The criminal and civil sanctions of RICO have a purpose, moreover, that goes beyond the limited rationale of the antitrust statutes, "namely, 'to punish, deter, incapacitate, and . . . directly to remove a corrupting influence from the channels of commerce.' " *Russello,* 104 S. Ct. at 303 (quoting Sen. McClellan, 116 Cong. Rec. 18,955 (1970)). As this Court explained in *Turkette,* "[t]he aim [of RICO] is to divest the [perpetrators] of the fruits of [their] ill-gotten gains." 452 U.S. at 585.

The real trouble with the distinct injury limitation is, however, that it is not merely a traffic light; it is a roadblock. It does not merely distinguish between proper and improper parties in enforcing RICO civilly or between proper and improper kinds of injury; it *precludes* suit under RICO by anyone, even conceding that a RICO violation occurred, except when the injury is trivial.

Indeed, erecting a roadblock to private civil RICO litigation appears to be the not-too-well-hidden purpose of the distinct injury limitation, for district courts have expressed fear that taking RICO at its face value would result in unjustifiable new federal litigation, where state law offers adequate remedies. *See, e.g., In re Action Industries Tender Offer,* 572 F. Supp. 846, 850 (E.D. Va. 1983) (distinct injury required) ("Congress did not intend for RICO to be used by private plaintiffs to claim treble damages for ordinary violations of criminal and tort laws."). *See also McCarthy v. Pacific Loan, Inc.,* 600 F. Supp. 137, 139 (D. Hawaii 1984) (criminal conviction required) ("To limit the expanding scope of civil RICO and the flood of litigation to

which it has given rise, several courts have imposed pleading or standing requirements on civil RICO plaintiffs."). Such a concern is not, however, a proper ground for rewriting a Congressional statute. *Tower v. Glover,* 104 S. Ct. 2820, 2826 (1984) ("It is for Congress to determine whether . . . litigation has become too burdensome to state or federal institutions and, if so, what remedial action is appropriate."). Concern with crowded court dockets as a reason for narrowing RICO was also addressed and rejected in the debates that preceded RICO. *See Civil Action* at 275 n.116, 277 n.120. In fact, in the teeth of such objections, Congress enacted RICO precisely because "state and federal [law] was not adequate." *Turkette,* 452 U.S. at 586. It is hardly appropriate, therefore, for courts to resurrect now a rational that Congress previously laid to rest. *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.,* 105 S. Ct. 658, 665 (1985). Additionally, Congress was "well aware," *Turkette,* 452 U.S. at 586, that RICO's new remedies would overlap with existing law, for it specifically provided that RICO would not "supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided" in RICO itself. 84 Stat. 947 (1970). This provision has meaning only if overlap was foreseen. Finally, suggesting that a court read a statute narrowly because "no need" exists for the protection extended by its plain meaning is improper. *Rubin v. United States,* 449 U.S. 424, 431 n.8 (1981) (quoting *TVA v. Hill,* 437 U.S. 153, 194 (1978)) ("wisdom or unwisdom . . . is to be put aside in the process of interpreting a statute").

The distinct injury limitation suffers from yet another defect. Like the phrase "organized crime" or, for that matter, "garden variety fraud" and "business dispute," no one has offered a satisfactory *legal* definition of distinct injury. Courts have indicated that it is something more than injury resulting from the predicate acts. But it has "not

been made clear . . . what that 'something more' would be." *Eisenberg v. Gagnon,* 564 F. Supp. 1347, 1352-53 (E.D. Pa. 1983).[12]

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[12] Petitioners in this appeal make an additional argument regarding distinct injury that has two aspects, neither of which is clearly separated. First, petitioners suggest that respondents did not allege that the enterprise's affairs were "direct[ed] or manag[ed] . . . through the overcharges of interest . . . ." *Brief of Petitioners* at 17. Apparently, they are here arguing that the pattern of racketeering may *only* be aimed at the enterprise itself and must be the means by which the enterprise is itself corruptly run (the legitimate enterprise as "victim"). Nothing in RICO, however, says that the pattern of racketeering cannot be aimed at another person or entity and still be the means by which an enterprise is corruptly run (the enterprise, legitimate *or* illegitimate, as "perpetrator"). *Civil Action* at 286-325. Second, they argue that respondents did not allege that the enterprise's affairs were "integrally permeated [at] the management" level by the pattern of racketeering. *Brief of Petitioners* at 27. *See also id.* at 17 ("integral relationship"), 18 (not "merely incidental," but "inseparable part of management"), 28 ("indispensable factor in . . . management"). Nothing in RICO, however, says that the pattern of racketeering has to be integral, not merely incidental, and an inseparable or indispensable part of the management of the enterprise. 18 U.S.C. § 1962(c) merely says "conduct or participate, directly or indirectly in the conduct of such enterprise's affairs through a pattern of racketeering activity." Properly so, the courts of appeals read that language in a common sense fashion, and they reject the sort of restrictive reading here urged by petitioners. *See, e.g., United States v. Cauble,* 706 F.2d 1322, 1331-33 (5th Cir. 1983) (cases collected and analyzed), *cert. denied,* 104 S. Ct. 996 (1984). Even accepting petitioners illiberal construction of "conduct" (they ignore "participate" and "directly or indirectly"), the facts alleged meet their own test. The business is banking, which obviously includes lending money at various rates of interest, and Heller is a parent of the subsidiary as Grayheck is its officer and director; if they set a fraudulent rate and implemented it in the bank's lending practices, it meets any test of RICO that respects its language, legislative history and purpose. *See, Comm'n v. Beneficial Finance Co.,* 360 Mass. 188, 241, 275 N.E.2d 33, 86 (1971) (Conduct of employee of subsidiary in "pattern" of bribery attributed to parent). These arguments also answer the similar contentions of the American Bankers Association. *Brief of Amicus Curiae* at 14-20. The Association's suggestion that the conduct of a RICO defendant must be "characteristic of organized crime," *id.* at 6-14, is fully answered by reasoning of this Court's opinions in *Perrin v. United States,* 444 U.S. 37, 46-49 (1979); *United States v. Culbert,* 435 U.S. 371, 373-80 (1978); and *United States v. Fabrizio,* 385 U.S. 263, 265-69 (1966).

To its credit, *Bankers Trust* attempted to illustrate a distinct injury caused by a pattern, but not caused by the act of racketeering. The majority observed:

> [A] plaintiff who is victimized by a defendant enterprise's multiple acts of arson may thereafter be denied fire insurance as a result of his fire history; such a plaintiff whose property subsequently suffers innocent fire damage would be unable to obtain reimbursement for the damage, and his monetary loss would be the result of the pattern of predicate acts of the enterprise, rather than any of the individual acts. 741 F.2d at 517.

The court offered this illustration on the assumption that "the terms of § 1964(c) were not discussed at all in the Senate, whose final RICO bill did not contain a provision for a private right of action . . . ." 741 F.2d at 517. Unfortunately, the court's scholarship is defective. After RICO passed the House, the Senate, in fact, reconsidered it with the express private claim for relief included.[13]

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[13] Under this Court's prevailing jurisprudence in 1970, it is likely that when RICO passed the Senate it gave rise to an *implied* private claim for actual damages and equity relief. *See, e.g., J. I. Case Co. v. Borak,* 377 U.S. 426, 433 (1964) ("It is the duty of the Courts to be alert to provide such remedies as are necessary to make effective the congressional purpose.") *See Merrill Lynch Pierce Fenner & Smith, Inc. v. Curran,* 456 U.S. 353, 378 (1982) ("at the time the legislation was enacted"); *Basic Concepts* at 1018 n.46; *Civil Action* at 262 n.71. The contrary assumptions of *Sedima, Bankers Trust* and petitioners, *Brief of Petitioners* at 19–20, simply cannot be squared with this Court's relevant jurisprudence. The issue of implied equitable relief is considered at length in Professor Johnson's able piece, *Predator Rights: Multiple Remedies for Wall Street Sharks Under the Securities Laws and RICO,* 10 J. Corp. L. 3, 62-75 (1984), which correctly concludes, contrary to *Sedima,* that RICO includes equitable relief for private parties, either expressly or by implication. *See also* Note, *The Availability of Equitable Relief in Civil Causes of Action In RICO,* 59 Notre Dame L. Rev. 945 (1984).

At that time, Senator Dole urged the adoption of the House bill, which then contained the treble damage provisions; he illustrated the importance of civil RICO by describing a pattern of arson visited by an organized crime figure on the A & P Tea Co. in an effort to sell it detergent. Senator Dole stated the statute would impose "heavy" economic sanctions on such conduct, and it would serve as an "effective" deterrent. 116 Cong. Rec. 36,296 (1970).

In his remarks concerning RICO, Senator Dole said nothing about *limiting* private civil suits by requiring prior criminal convictions. Indeed, he expressly recognized the inadequacy of proceeding solely through the criminal process. Similarly, Senator Dole said nothing about *limiting* the A & P's private civil recovery of treble damages for its loss of business and its fire-bombed stores to *distinct* injuries. Indeed, Senator Dole would not have described such circumscribed civil sanctions as either "heavy" or an "effective" deterrent, much less "enhanced," as the findings and statement of purpose described them. 84 Stat. 923 (1970).

Finally, with regard to *Sedima's* review of RICO's legislative history, this Court must set straight *Sedima's* twisted view that while RICO "for the most part originated in the Senate," the civil provisions permitting suit by private persons "originated in the House." 741 F.2d at 488.[14]

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[14] *Sedima's* view of this portion of RICO's legislative history has begun to mislead other courts, including *Haroco*, 747 F.2d at 398. (*Sedima*'s analysis of the legislative history of RICO termed "persuasive"). *See also McCarthy v. Pacific Loan Inc.*, 600 F. Supp. 137, 139-40 (D. Hawaii 1984); *White v. Fosco*, 599 F. Supp. 710, 715-16 (D.D.C. 1984); *Gardner v. Surnamer*, 599 F. Supp. 477, 479-80 (E.D. Pa. 1984). *But see*, Note, *Civil RICO: Prior Conviction and Burden of Proof*, 60 Notre Dame L. Rev.__(1985).

A review of the legislative history of the 1970 Act demonstrates the misconceived character of *Sedima's* view. First, Congress acted deliberately in its enactment of the Organized Crime Control Act, including civil RICO, and it had impressive advice during the process. Congressional investigations, presidential commissions, and bar associations played major roles. The process originated in the hearings and reports of the Kefauver Committee, whose focus included infiltration by organized criminal elements into legitimate businesses. *Basic Concepts, supra* note 8, at 1014-15; *Civil Action* at 249. The American Bar Association ("ABA") formed its Organized Crime Commission and participated actively, recommending model legislation, which included immunity, perjury, and syndicated gambling provisions.[15] In 1967, the President's Commission on Law Enforcement and Administration of Justice made the key recommendation that led to RICO when it urged that Congress adopt antitrust type remedies to control underworld activities, particularly in legitimate businesses.[16] In response, Senator Hruska and Congressman (now Justice) Poff introduced companion legislation that included criminal and civil sanctions and public and private enforcement mechanisms in *both* Houses of the Congress. *See, e.g.*, S. 2048, 90th Cong., 1st Sess. (1967); 113 Cong. Rec. 17,999 (1967). The ABA carefully studied the bills and *endorsed* their concepts, but recommended that the Congress draft them outside of the antitrust statutes to give them a *broader* impact.

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[15] *See, e.g.*, 2 *Organized Crime and Law Enforcement* 57-91 (syndicated gambling) and 157-86 (immunity) (1953) (Final Report By and Model Acts Prepared for the ABA Commission on Organized Crime); *Organized Crime Control: Hearings Before Subcomm. No. 5, House Comm. on Judiciary*, 91st Cong., 2d Sess. 579-85 (1970) (perjury) (hereinafter House Hearings).

[16] *The Challenge of Crime in a Free Society: Final Report of the President's Commission on Law Enforcement and Administration of Justice* 208 (1967) ("techniques . . . especially valuable because they require a less rigid standard of proof").

The ABA presented these recommendations to the House *and* the Senate in 1969.[17] Additionally, the National Commision on Reform of the Federal Criminal Law undertook similar studies.[18] The Commission included Congressman Poff, its vice-chairman, and Senators McClellan and Hruska, as well as Congressman (now Judge) Mikva. Subsequently, Senator Hruska and Congressman Poff drafted new legislation that took the ABA at its word. They introduced this legislation in both Houses.[19] The Senate held hearings at which the ABA orally presented its favorable views.[20] The President also endorsed the legislation *while it was being processed in the Senate* and specifically called for antitrust-type remedies in his "Message on Organized Crime." *Senate Hearings* at 449 ("The injunction with its power of contempt and seizure, monetary fines and treble damages actions . . . suggest a new panoply of weapons . . . .").

As a result of the hearings, Senators McClellan and Hruska, after consultation with Congressman Poff, introduced S. 1861. 115 Cong. Rec. 9,566-68 (1969). While S. 1861 did not include an express private claim for relief, it is erroneous to conclude, as *Sedima* does, that S. 1861 did not give rise to an implied claim for actual damages and equity relief, or to argue that the sponsors of the legislation had rejected the concept of the private attorney general. Not one word in the remarks introducing the legislation

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[17] *Measures Relating to Organized Crime: Hearings Before the Subcomm. on Crim. Laws and Procedures, Senate Comm. on Judiciary,* 91st Cong., 1st Sess. 259 (statement), 556 (report) (1969) (hereinafter *Senate Hearings); House Hearings* at 537 (statement), 147 (report). *See Basic Concepts* at 1015; *Civil Action* at 254-56.

[18] *Civil Action* at 253 n.47 and accompanying text.

[19] *See, e.g.,* S. 1623, 91st Cong., 1st Sess. (1969); 115 Cong. Rec. 6,995-96 (1969).

[20] *Senate Hearings* at 259 (testimony of Rufus King for the ABA).

supports this proposition.[21] The bill itself said in its Statement of Findings and Policy that it included "other relief." 115 Cong. Rec. 9,568 (1969). The legislation was termed "remedial" and its "liberal construction" was mandated. *Id.* at 9,571. Accordingly, it should be concluded that the Organized Crime Control Act, as amended in Title IX to include the text of S. 1861, and as passed by the Senate, gave rise to an implied private claim for relief. *Cannon v. University of Chicago,* 441 U.S. 677, 696-97 (1979) ("It is always appropriate to assume that our elected representatives . . . know the law.") Not one word of legislative history can be cited to establish that Senators McClellan or Hruska — or any other senators — spoke *against* such a private claim for relief. *Sedima* cites none. The Organized Crime Control Act then passed the Senate by a vote of 73 to 1. 116 Cong. Rec. 972 (1970).

While the legislation was pending in the House, the President asked the ABA to study it. The ABA's views were presented to the House Committee in oral testimony by its president-elect, Edward L. Wright. He called for the House to restore to the bill the treble damage provision that had appeared in S. 1623. *House Hearings,* at 543-44. The Committee was well aware of the scope of the bill as passed by the Senate, since the Association of the Bar of the City of New York had objected in testimony before the House Judiciary Committee to its reach beyond "organized crime," including its application to "any securities fraud case." *House Hearings,* at 294 ("sweep far beyond the field of organized crime"); 329 ("any securities fraud case"); *see also*

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[21] When Senator McClellan introduced S. 1861, for example, he said he did not want to see the "great complexity of antitrust law enforcement" introduced into the construction of RICO. 115 Cong. Rec. 9,567 (1969). That "complexity" is, of course, the jurisprudence on standing, which is applicable to private, not public enforcement. *See supra,* note 13 for a review of the implied claim for relief jurisprudence then prevalent.

Civil Action at 272-73. Moreover, Senator McClellan took the floor and called to the *Senate's* attention the ABA's recommendations; he explicitly characterized its recommendation for the restoration of the treble damage provision as a "constructive contribution." 116 Cong. Rec. 25,190 (1970).

The House Committee reported the Organized Crime Control Act in the enacted language. H. R. Rep. No. 1549, 91st Cong., 2d Sess. 56-58 (1970). Dissenting committee members, including Congressman Mikva, specifically objected to the private civil provisions' breadth, because the provisions were not limited to "organized crime." The dissenting members noted that the provisions were "a tool to be employed for all." *Id.* at 187. They also stressed the burden that this breadth might place on the courts. *Id.*

During the vigorous House debate, Congressman Steiger offered a comprehensive amendment that included seven different provisions (not a single subject matter amendment relating only to equity relief as *Sedima* implies, 741 F.2d at 489 n.20).[22] Congressman Poff suggested that Steiger *withdraw* his amendment — the amendment was *not defeated* — and Congressman Steiger quickly agreed. 116 Cong. Rec. at 35,346-47 (1970). Even had the amendment been considered and been defeated, it would not have affected the statute's plain language.[23] Accordingly, the

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[22] The Steiger amendment contained provisions that would have provided that no amount in controversy was required, clarified the availability of equity relief, included a claim for relief for damages for the government, repeated the private claim for treble damage relief, authorized the attorney general to intervene in private litigation, provided for non-mutual estoppel between government criminal and private civil cases, and imposed a uniform federal statute of limitations on RICO suits. 116 Cong. Rec. 35,346 (1970).

[23] *Bryant v. Yellen*, 447 U.S. 352, 376 (1980) ("failure to enact suggested amendments . . . [is] not the most reliable indication[] of congressional intention").

Poff-Steiger interchange is hardly, as *Sedima* suggests, 741 F.2d at 489 n.20, an *inclusion* of treble damage relief and an *exclusion* of equitable relief. The legislation then passed the House by a vote of 341 to 26. 116 Cong. Rec. 35,363 (1970). After the Senate reconsidered it, the President signed the Bill, as expected in light of his earlier endorsement of its basic concepts.[24]

II. COURTS ARE WITHOUT POWER TO REDRAFT LEGISLATION BECAUSE OF A DISAGREEMENT WITH ITS POLICY OR A REASSESSMENT OF ITS POSSIBLE EFFECT ON THE ADMINISTRATION OF JUSTICE.

Article III of the Constitution does not grant a court power to redraft legislation because of its "appraisal of the wisdom or unwisdom of a particular [legislative] course

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[24] The issues raised by Congressman Steiger's proposed amendment led RICO's Senate sponsors to introduce amendatory legislation in the 92d and 93d Congresses. The legislation, like Congressman Steiger's amendment, made a number of broadening or clarifying changes in RICO; the legislation passed in the Senate, but it was not processed in the House. *Basic Concepts* at 1020 n.67; *Civil Action* at 278 n.121. *Sedima* suggests that these proposed amendments shed light on the action of the 91st Congress, 741 F.2d at 489 n.20. They will not carry the weight *Sedima* places on them. *Russello*, 104 S. Ct. at 302; *United States v. Wise*, 370 U.S. 405, 411 (1962) ("[s]tatutes are construed by the courts with reference to the circumstances existing at the time of the passage"). *Sedima* also notes the testimony of the Department of Justice at that time that only it could obtain "injunctive" relief. *Victims of Crime: Hearing Before the Subcomm. on Crim. Laws and Procedures of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. 158 (1972). *Sedima* does *not* note that the Department also indicated its view that a criminal conviction was *not* required, *id.*; nor does it note that the ABA endorsed the legislation, commenting that it was but a "codification" of basic antitrust law, *id.* at 490. *None* of this subsequent hearing testimony can be persuasively used to interpret the 1970 Act. *Garcia v. United States*, 105 S. Ct. 479, 483-84 (1984) (reliance on legislative history beyond committee reports eschewed); *Piper v. Chris-Craft Industries*, 430 U.S. 1, 31 (1977) ("statements received [in hearings] without comment . . . [or] cross examination . . . [are of] limited value.").

. . . ." *Diamond v. Chakrabarty*, 447 U.S. 303, 318 (1980) (quoting *TVA v. Hill*, 437 U.S. 153, 194 (1978)). *See also Park 'N Fly, Inc.*, 105 S. Ct. at 666 (1985); *Turkette*, 452 U.S. at 587.

Nevertheless, an examination of the policy considerations implicated by Congress' chosen course of action in 1970 is required by this Court's jurisprudence indicating that plain meaning may be departed from to avoid absurd or surprising results. *See, e.g., United States v. Ryan*, 284 U.S. 167, 175-76 (1931) (civil forfeiture provision narrowed to give it "a sensible construction"). The language chosen by Congress will then be seen as "neither absurd nor surprising." *Turkette*, 452 U.S. at 587.

The current controversy over RICO has not centered on its criminal provisions or its possible civil application in the areas of violence, the provision of illicit goods and services, or the corruption of unions and governmental entities. Instead, the controversy has focused almost exclusively on the commercial fraud area.[25] In 1974, the Chamber of Commerce of the United States published a comprehensive study

[25] Legitimate business people have little to fear from federal or state RICO legislation in the fraud area. Neither penalizes conduct that is not presently subject to criminal sanctions under its predicate offenses. Both merely provide enhanced criminal and civil sanctions and new enforcement mechanisms. Legitimate business people do not perpetrate fraud; they are victimized by it.

In *Arizona ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 597, 667 P.2d 1304, 1312 (1983), a civil securities fraud action, the Court observed:

> There is a moral imperative to provide redress for those injured. Further, when out-of-state investors are swindled by Arizona enterprises, the reputations and businesses of the majority of honest business people within the state are harmed. That this state is willing to provide aid in redressing these wrongs is evidence that the state is serious in its fight to eradicate organized crime. This evidence may instill confidence in non-residents seeking to invest in the legitimate businesses of this state.

It is interesting to note that Walter E. Heller Western, Inc., subsidiary of Petitioner Walter E. Heller International Corp., has itself sought and received a judgment in the amount of $1,875,000 pursuant to the Arizona racketeering act as the victim of a corporate officer's embezzlement prosecuted by the Arizona Attorney General. Neither the criminal case, Maricopa County Superior Court No. CR-134094, nor the parallel private civil action filed by victim Walter E. Heller Western, Inc., Maricopa County Superior Court No. C-448286, alleged any distinct injury or any special injury at all beyond that of the predicate offenses. Petitioner's subsidiary simply alleged a Fraudulent Scheme and Artifice, A.R.S. § 13-2310 (derived from the federal mail fraud statute 18 U.S.C.A. § 1341) and sought treble damages, costs and attorneys' fees pursuant to Arizona's racketeering statute. The position of Petitioner as victim or as defendant seems to determine its position on the policy issues presented.

Good faith commercial disputes do not constitute *criminal* fraud; the elements of criminal fraud must be shown even in a RICO *civil* suit, as Judge Ackerman persuasively demonstrates in *United States v. Local 560, International Brotherhood of Teamsters*, 581 F. Supp. 279, 332 n.30, 337 (D.N.J. 1984), *appeal pending*. RICO does not, therefore, involve strict liability, negligence, or constructive fraud. *Civil Action* at 244 n.23, 306 n.172, 334 n.216. RICO, through its predicate offenses, requires *criminal* state of mind. *See, e.g., Durland v. United States*, 161 U.S. 306, 314 (1896) (good faith defense to mail fraud). *See also Trans World Airlines, Inc. v. Thurston*, 105 S. Ct. 613, 624-26 (1985) (good faith reliance on advice of counsel defense to claim for multiple damages for "willful" conduct); Hawes and Sherrard, *Reliance on Advice of Counsel as a Defense in Corporate and Securities Cases*, 62 Va. L. Rev. 1 (1976). RICO's opponents, in fact, object to the *effective* enforcement of *present* law. *See also Haroco*, 747 F.2d at 399 n.16 (criminal fraud under RICO must be distinguished from civil fraud).

An impression is also apparently widespread in the securities industry that RICO "overlaps" all securities fraud. Nothing could be further from the truth. RICO says "offenses" involving "fraud in the sale of securities" "punishable under any law of the United States." 18 U.S.C. § 1961(1)(D) (1982). "Offense" means a breach of the *criminal* laws. *Black's Law Dictionary* 975 (5th ed. 1979); *Dan River, Inc. v. Icahn*, 701 F.2d 278, 291 (4th Cir. 1983) ("Criminal intent is . . . necessary to either mail fraud or securities fraud [under RICO]"). Accordingly, only the securities acts' *criminal* fraud provisions fall within RICO. *See, e.g.*, Securities Act of 1933 § 24, 15 U.S.C. § 77x (1982) ("willfully"); Securities Exchange Act of 1934 § 32, 15 U.S.C. § 78ff ("willfully"). Merely negligent conduct does not fall within RICO. *See Aaron v. SEC*, 446 U.S. 680, 701-02 (1980) (intent to defraud rather than negligence in violations of

of fraud. The Chamber estimated the direct economic cost

of various forms of fraud at $41.78 billion annually.[26] Given the inflation rate since 1974, a figure twice that amount could be conservatively estimated today.[27]

Fraud against the government, not included in the Chamber's study but relevant in light of *Sedima's* fact pattern, costs anywhere from $2.5 to 25 billion.[28] Since much of the money included in federal grant programs passes through state and local government's hands, such units of government could bring civil RICO suits to vindicate their interests against fraud. *See, e.g., Comm'n v. Cianfrani,* 600 F. Supp. 1364, 1368-69 (E.D.Pa. 1985) (RICO treble damage award entered against state senator for "ghost" workers); *Anchorage v. Hatachi Cable, Ltd.,* 547 F. Supp. 633, 644 (D. Alaska 1982) (RICO civil suits in kickback scheme). This case may also vitally affect the interpretation of state racketeering acts, which provide an important separate state

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§ 17(a)(1) of the 1933 Act, § 10(b) of the 1934 Act, but not when engaging in untrue statements or omissions or transactions that operate as a fraud under § 17(a)(2) and § 17(a)(3) of the 1933 Act). Some overlap between statutes "is neither unusual nor unfortunate." *SEC v. National Securities, Inc.,* 393 U.S. 453, 468 (1969). Indeed, the securities acts envision it. *See, e.g.,* Section 28(a) of the Securities and Exchange Act of 1934 § 28, 15 U.S.C. § 78bb(a) ("rights and remedies" "in addition" to "any and all other rights" that might exist).

[26] United States Chamber of Commerce, *White Collar Crime: Everyone's Problem, Everyone's Loss* 6 (1974).

[27] *See Hearings on the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1981: Hearings Before the Subcomm. on the Departments of State, Justice and Commerce, the Judiciary, and Related Agencies of the House Comm. on Appropriations,* 96th Cong., 2d Sess. 17 (1980) (testimony of William H. Webster) ($44 to 100 billion).

[28] N.Y. Times, May 17, 1982, at 15, col. 2. *Sedima* misleadingly described the case as involving "business fraud." 741 F.2d at 484. Government contract procurement fraud more accurately describes the conduct, since NATO subcontractors were involved.

cause of action for defrauded state and local governments, whether or not the funds originated in federal programs. The data on specialized government benefit programs are equally disturbing. Medicaid beneficiary fraud amounts to $1.2 billion; medicaid provider fraud amounts to $715 million.[29] Medicare fraud amounts to $1.5 billion.[30]

Bank fraud is deeply disturbing, especially in situations similar to that in *Bankers Trust.* In 1980-81, 105 banks and savings and loan associations failed, costing the taxpayers $1 billion. Criminal activity was a "major contributing factor" in roughly one-half of the bank failures and in one-quarter of the savings and loan failures.[31] Subsequent failures are estimated to have added another $1 billion to the total.[32] In short, fraud is no "garden variety"

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[29] *Unreported Taxable Income From Selected Illegal Activities* (Report by Abt Associates to Internal Revenue Service) 294 (Sept. 1984).

[30] *Id.* at 303.

[31] *House Comm. on Government Operations, Federal Response to Criminal Misconduct and Insider Abuse in the Nation's Financial Institutions,* H.R. Rep. No. 1137, 98th Cong. 2d Sess. 5 (1984) (hereinafter *Bank Report*). The Report further notes:

> Despite such enormous losses, neither the banking nor the criminal justice systems impose effective sanctions or punishment to deter white-collar bank fraud. The few insiders who are singled out for civil sanctions by the banking agencies are usually either fined de minimis amounts or simply urged to resign. The few who are criminally prosecuted usually serve little, if any, time in prison for thefts that often cost millions of dollars.

The parties below did not raise the possible implications of this Court's jurisprudence in *Marine Bank v. Weaver,* 455 U.S. 551, 558-59 (1982); *International Brotherhood of Teamsters v. Daniel,* 439 U.S. 551, 569-70 (1979); or *Silver v. New York Stock Exchange,* 373 U.S. 341, 357-61 (1963) on individuals or entities in transactions that are subject to other comprehensive and pervasive schemes of federal regulation. *But see* 15 U.S.C. § 78bb(a); 29 U.S.C. § 1144(a); 84 Stat. 947 (1970); and note 35 *infra.* It may be appropriate for this Court expressly to leave these implications open.

[32] *Bank Report* at 5. *See generally* H. Edelhertz, *The Nature, Impact*

matter to the people or the businesses of this nation. Legal remedies must be developed that are, in an appropriate combination, swift, sure, and severe. R. Posner, *Economic Analysis of Law* § 7.2 (2d ed. 1977). Civil RICO provides those remedies; its application to fraud, therefore, is neither absurb nor surprising. *See also* 84 Stat. 922-23 (1970) (Statement of Findings and Purpose) ("fraud . . . harms innocent investors") *Alcorn County,* 731 F.2d at 1165 ("[T]he provision for treble damages [was intended by Congress] . . . to encourage private enforcement of the law on which RICO is predicated. These provisions provide strong incentives to civil litigants and are integral to the efforts of Congress to enlist the aid of civil claimants in deterring racketeering . . . .").

Civil RICO promises great benefits. Yet its possible detrimental use must be frankly faced. Commentators express concern that civil RICO has inspired frivolous law suits.[33] Fear is also expressed that an "explosion" of RICO

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and Prosecution of White-Collar Crime 6-7 (1970) ("white-collar crime, like common crime, can have a serious influence on the social fabric . . . ."); *Civil Action* at 341-49 (various studies on fraud and government actions to combat it reviewed). Raising federalism concerns, too, is inapt in the context of *Bankers Trust,* as it involved bankruptcy fraud, a matter entrusted to the federal government by the Constitution. U.S. Const., art. III, § 7.

[33] Those who express this concern have the burden of proving:

1) that a *substantial* number of frivolous RICO suits are being filed,
2) that *existing* safeguards against such suits are not adequate to remedy them,
3) that *new* safeguards against such suits that are adequate *cannot* be designed, and
4) that the detriment from these suits *outweighs* the benefit from legitimate suits.

None of these burdens has been met. Nor is it a concern that warrants the rewriting of a congressional statute. *Patsy v. Fla. Bd. of Regents,* 457 U.S. 496, 512 n.13 (1982) (burden on federal courts "not sufficient to justify a judicial decision to alter [a] congressionally [drafted scheme]").

suits is occuring that threatens to overload the federal courts.[34] These fears have been unduly inflamed, for ample remedies now exist to deal with such suits.[35] Accordingly, no policy considerations exist that warrant this Court's imposition of special limitations on civil RICO. *Blue Chip*

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[34] *See Brief of Amici* in *Sedima, S.P.R.L. v. Imrex Co. Inc.,* No. 84-648 at 22 n.31 for data on the actual workload of federal courts that places this concern in its proper context.

Sedima, 741 F.2d at 487 suggested that suits under civil RICO *against* "respected and legitimate 'enterprises'" are "extraordinary, if not outrageous." *But see Haroco,* 747 F.2d at 395 n.14. ("[T]he white collar crime alleged in some RICO complaints against 'legitimate' businesses is in some ways at least as disturbing . . . ."). Those who make such remarks are apparently unaware of the substantial body of literature on white-collar crime by so-called respectable businesses. *See, e.g.,* Saxon, *White Collar Crime: The Problem and The Federal Response,* Rep. No. 80-84 EPW Congressional Research Service, (1980) (literature reviewed); Ross, *How Lawless Are Big Companies,* Fortune, Dec. 1, 1980, at 57 (survey of 1043 major corporations indicated that between 1970-1980, 117 had significant convictions or consent decrees consisting of 98 antitrust violations; 28 cases of kickbacks, bribery, or illegal rebates; 21 instances of illegal political contributions; 11 cases of fraud; and 5 cases of tax evasion).

[35] *See Reiter v. Sonotone Corp.,* 442 U.S. 330, 344-45 (1979) (fear of frivolous suits unjustified in light of the tools available); *Myers v. Bethlehem Shipbuilding Corp.,* 303 U.S. 41, 51-52 (1938) (Brandeis, J.) ("Law suits . . . often prove to . . . [be] groundless; but no way has been discovered for relieving a defendant from the necessity of a trial to establish the fact.") Consider *Report of the Proceedings of the Judicial Conference of the United States, September 21-22, 1983* 56 ("[t]he existing tools [to weed out frivolous or meritless litigation] are sufficient, but perhaps not fully understood or utilized."). If the remedies are inadequate, however, it is the remedies, not the substantive law that should be changed. *Hudson v. Palmer,* 104 S. Ct. 3194, 3215 n.30 (1984) (Stevens, J., dissenting); *Hoover v. Ronwin,* 104 S. Ct. 1989, 2012 (1984) (Stevens, J. dissenting). Congress, too, sits to make just such decisions. 130 Cong. Rec. S13,349 (daily ed. Oct. 5, 1984) (statement of Sen. Thurmond announcing hearing on civil RICO). *See Patsy, supra,* note 33, 457 U.S. at 513 (1982) ("The very difficulty of these policy considerations, and Congress' superior institutional competence to pursue this debate, suggest that legislative not judicial solutions are preferable.").

Stamps v. Manor Drug Store, 421 U.S. 723, 748 (1975) ("[T]he Judiciary may not circumscribe a right which Congress has conferred because of any disagreement it might have with Congress about the wisdom of creating so expansive a liability.").

CONCLUSION

This Court should reject the judicial effort to read into civil RICO a distinct injury limitation.[36]

Respectfully Submitted,

Robert K. Corbin
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[36] This amici's brief in *Sedima* concluded with a quote from Congressman Steiger, in which he expressed his concern that sophisticated arguments on behalf of organized crime had abrogated the law. Congressman Steiger's insights are unfortunately neither original nor applicable only to organized crime. More than 100 years ago, this Court noted, "It is easy, by very ingenious and astute construction, to evade the force of almost any statute, where a court is so disposed . . . [By such] a construction [it is possible to] annul [it] and render[] it superfluous and useless." *Pillow v. Roberts*, 54 U.S. (13 How.) 472, 476 (1851) (Grier, J.) *See also Indian Towing Co. v. United States*, 350 U.S. 61, 68 (1955) (Tort Claims Act) (rejecting "distinctions so fine spun and capricious as to be almost incapable of being held in the mind for adequate formulation"). Such an approach to statutory construction, however, carries with it a heavy price. After a lifetime of study of the law, Dean Roscoe Pound concluded that such construction (1) "tend[ed] to bring the law into disrespect; (2) . . . subject[ed] the courts to political pressure; [and] (3) . . . invite[d] an arbitrary personal element in judicial administration." 3 *Jurisprudence* 488 (1959). It threatened, he found, to make "laws . . . worth little" and to "break down" the "legal order" itself. *Id.* at 490.

Appendix A

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS STATUTE (18 U.S.C. 1961-1968)

As amended, October 25, 1984

§ 1961. Definitions

As used in this chapter —

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States

Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred

in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an

unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States, irrespective of any provision of State law —

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any —

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly and indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes —

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(e)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section —

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that —

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure

to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(f) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(g) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury,

harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(h) With respect to property ordered forfeited under this section, the Attorney General is authorized to —

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) The Attorney General may promulgate regulations with respect to —

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(j) Except as provided in subsection (m), no party claiming an interest in property subject to forfeiture under this section may —

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(k) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(l) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(m)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within

thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that —

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the

right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause action to be expedited in every way.

§ 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

§ 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall —

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall —

(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by —

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as

he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such

attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of —

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for

the custody and control of such material, the Attorney General shall promptly —

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any succes or so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office and with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such

custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

1. *Ariz. Rev. Stat. Ann.* § 13-2312 (1978 & Supp. 1984).
2. *Cal. Penal Code* § 186 (West Supp. 1984).
3. *Colo. Rev. Stat.* § 18-17-101 (Supp. 1983).
4. *Conn. Gen. Stat. Ann.* § 53-394 (Supp. 1984).
5. *Fla. Stat. Ann.* § 895.01 (West Supp. 1983).
6. *Ga. Code Ann.* § 16-14-1 (Supp. 1982).
7. *Hawaii Rev. Stat.* § 842-1 (1976).
8. *Idaho Code* § 18-7801 (Supp. 1983).
9. *Ill. Rev. Stat. Ch.* 56-1/2 § 1651 (Smith-Hurd Supp. 1983) (limited to narcotics).
10. *Ind. Code Ann.* § 35-45-6-1 (Burns Supp. 1982).
11. *La. Rev. Stat.* §§ 15:1351-56 (West. 1983) (limited to narcotics).
12. Mississippi, S. Bill No. 1087, enacted 1984.
13. *Nev. Rev. Stat.* § 207.4-207.17 (1983).
14. *N.J. Stat. Ann.* 2C:41 (Supp. 1983).
15. *N.M. Stat. Ann.* § 30-42-1 (Supp. 1980).
16. *N.D. Cent. Code* Ch. 12.1-06.1 (Supp. 1983).
17. *Or. Rev. Stat.* § 166.715 (1981).
18. 18 *Pa. Cons. Stat.* § 911 (1983).
19. *R.I. Gen. Laws* § 7-15-1 (Supp. 1983).
20. *Wash. Rev. Code Ann.* § 9A.04.080 (Supp. 1984).
21. *Wis. Stat. Ann.* § 946.80 (West Supp. 1983).
22. *Utah Code Ann.* § 76-10-1601 (Supp. 1983).

STATE RICO SURVEY

	Federal	Hawaii	Pennsylvania	Florida	Arizona
ENACTED	Oct. 15, 1970	1972	June 6, 1973 June 27, 1978	Oct. 1, 1977 June 23, 1979	Oct. 1, 1978 1980, 1981
AMENDED	Oct. 1, 1979		Dec. 4, 1980		1982, 1983, 1984
CRIMINAL ACTION					
1. Proceeding allowed	Yes 18 § 1961	Yes § 842	Yes 18 § 911	Yes § 895	Yes § 13-2301
2. Brought by					
AG	NP	NP	Yes 911e(2)	NP	NP
DA	NP	NP	Yes 911e(2)	NP	NP
3. Court	NP	NP	NP	NP	NP
ACTS					
4. Prohibited Activities					
– investment of $ from pattern or debt	Yes 1962(a)	Yes 842-2(1)	Yes 911b(1)	Yes 895.03(1)	Yes 2312A
– investment or control through pattern or debt	Yes 1962(b)	Yes 842-2(2)	Yes 911b(2)	Yes 895.03(2)	Yes 2312A
– participation through pattern or debt	Yes 1962(c)	Yes 842-2(3)	Yes 911b(3)	Yes 895.03(3)	Yes 2312B
– conspiracy to do the above	Yes 1962(d)	NP	Yes 911b(4)	Yes 895.03(4)	NP
5. Pattern	2 rel., 1 after eff. date, 1 w/in 10 yrs. of prior excluding imprisonment 1961(5)	NP	2 rel., 1 after eff. date 911h(4)	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior 895.02(4)	None required
6. Predicate offenses	Yes 1961(1)	Yes 842-1	Yes 911h(1)	Yes 895.02(1)	Yes 2301D(4)
7. Person	Yes 1961(3)	Yes 842-1	Yes 911h(2)	NP	NP
8. Enterprise	Yes 1961(4)	Yes 842-1	Yes 911h(3)	Yes 895.02(3)	Yes 2301D(2)
9. State of mind	NP	NP	NP	NP	Knowing 2312C
SANCTIONS					
10. Sanctions					
– imprisonment	Up to 20 yrs. 1963(a)	Yes 842-3	Felony 1* 911c	Yes 895.04(1)	Class 3 fel. 2312C
– fine	Up to $25,000 1963(a)	Yes 842-3	Felony 1* 911c	Yes, up to 3x gain or harm 895.04(2)	Class 3 fel. 2312C
– forfeiture	Yes 1963(a)	Yes 842-3	NP	NP	Yes 2313, 2314
– costs	NP	NP	NP	Yes 895.04(2)	Yes 2313, 2314
11. Injunctive relief					
– restraining order	Yes 1963(b)	NP	NP	NP	Yes 2313
– racketeering lien	NP	NP	NP	Yes 895.07	Yes 2313, 2314.02
CIVIL SUIT					
12. Proceeding allowed	Yes 1964	Yes 842-5, 3	Yes 911d	Yes 895.05	Yes 2314
13. Brought by					
– AG	Yes 1964(b)	Yes 842-5	Yes 911e(1)	Yes 895.05(5)	Yes 2314A
– DA	NP	NP	NP	Yes 895.05(5)	Yes 2314 A, K
– Private Party	Yes 1964(c)	Yes 842-3(c)	NP	Yes 895.05(6)	Yes 2314A
14. Court	U.S. Dist. 1964(a)	Circuit 842-5	Courts of Common Pleas, Commonwealth Ct. 911d(1)	Circuit 895.05(1)	Superior 2314
15. Burden of Proof					
– Law	NP	NP	NP	NP	Preponderance 2314I
– Equity	NP	NP	NP	NP	Preponderance 2314I
16. Provision for innocent parties	Yes § 1964(a)	Yes 842-8(a)	Yes 911d1ii	Yes 895.05(2)(c)	Yes 2314B

17. Preliminary relief	Yes 1964(b)	Yes 842-6	Yes 911d2	Yes 895.05(5)(6)	Yes 2314C
– harm requirement	NP	NP	NP	Yes 895.05(6)	NP
– bond is an option	Yes 1964(b)	Yes 842-8(b)	Yes 911d2	Yes 895.05(5)(6)	Yes 2314C
18. Showing for relief					
– general	NP	NP	NP	Yes 895.05(6)	NP
– no special	NP	NP	NP	Yes 895.05(6)	NP
19. Scope of equitable relief					
– divest	Yes 1964(a)	Yes 842-8(a)	Yes 911d(1)(i)	Yes 895.05(1)(a)	Yes 2314D(1)
– restrict	Yes 1964(a)	Yes 842-8(a)	Yes 911d(1)(i)	Yes 895.05(1)(b)	Yes 2314D(2)
– dissolve	Yes 1964(a)	Yes 842-8(a)	Yes 911d(1)(ii)	Yes 895.05(1)(c)	Yes 2314D(3)
– reorganize	Yes 1964(a)	Yes 842-8(a)	NP	Yes 895.05(1)(c)	Yes 2314D(3)
– revoke permits	NP	Yes 842-5	Yes 911d(1)(ii)	Yes 895.05(1)(d)	NP
– forfeit charter	NP	Yes 842-5	Yes 911d(1)(ii)	Yes 895.05(1)(e)	NP
20. Scope of legal relief					
– amount	3x 1964(c)	Damages 842-8(c)	NP	3x + punitive 895.05(7)	3x 2314A
– costs	Yes 1964(c)	Yes 842-8(c)	NP	Yes 895.05(7)	Yes 2314A
– attorney fees	Yes 1964(c)	Yes 842-8(c)	NP	Yes 895.05(7)	Yes 2314A
PROPERTY SUBJECT					
21. Type of property subject to forfeiture					
– real property	NP	NP	NP	Yes 895.05(2)(a)	Yes 2314D(6)(a), (b)
– personal property	NP	NP	NP	Yes 895.05(2)(a)	Yes 2314D(6)(c)
– money	NP	NP	NP	Yes 895.05(2)(a)	Yes 2314D(6)(c)
– may substitute other property if forfeited property is not available	NP	NP	NP	NP	NP
PROCEDURE AND PRIORITY					
22. Civil Investigative Demand (subpoena and/or interrogatory)	Yes 1968	Yes 842-10	Yes 911f	Yes 895.06	Yes 2315
23. Seizure without process in certain instances	NP	NP	NP	Yes 895.05(3)	NP
24. Relation back	NP	NP	NP	Yes 895.05(2)b	2314.02I(1), (2)
25. Jury trial	NP	NP	NP	Yes 895.05(7)a	NP
26. Estoppel	Yes 1964(d)	Yes as to action by the State 842-8(d)	Yes 911d(3)	Yes 895.05(8)	Yes 2314F
27. Intervention by State	NP	NP	NP	Yes 895.05(9)	Yes, but not in action by D.A. 2314K
28. Civil suit not precluded by criminal action	NP	NP	NP	Yes 895.05(11)	Yes 2314M
29. Priority of individual over State to compensation	NP	NP	NP	Yes 895.05(7)b	NP
30. Fund for investigation and prosecution	NP	NP	NP	NP	Yes 2314.01(AG) 2314.03(DA)
31. Reciprocity of enforcement	NP	NP	NP	NP	NP
32. Statute of limitation	NP	NP	NP	5 yrs. suspended 895.05(10)	Yes 2314G 7 yrs.
33. Construction	Liberal PL 91-452 § 904	Fair Import 701-104	Fair Import 105	Strict 775.021	Fair Meaning 13-104
34. Severability	NP	NP	NP	NP	NP
35. Findings and intent	Yes PL 91-452 § 1	NP	Yes 911a	NP	NP

	Rhode Island	New Mexico	Georgia	Indiana	New Jersey
ENACTED	1979	February 28, 1980	July 1, 1980	1980	June 15, 1981
AMENDED			April 16, 1982		
CRIMINAL ACTION					
1. Proceeding allowed	Yes 7-15	Yes 30-42	Yes 26-3401	Yes 35-45-6-1	Yes 2C:41-1
2. Brought by					
AG	NP	Yes 30-42-5	NP	NP	Yes 41-3(c)
DA	NP	Yes 30-42-5	NP	NP	Pros. Atty. 41-1(g) when authorized
3. Court	Superior 7-15-8	NP	NP	NP	NP
ACTS					
4. Prohibited Activities					
– investment of $ from pattern or debt	Yes 7-15-2(a)	Yes 30-42-4A	Yes 3403(a)	Yes -6-2(a)(1)	Yes 41-2(a)
– investment or control through pattern or debt	Yes 7-15-2(b)	Yes 30-42-4B	Yes 3403(a)	Yes -6-2(a)(2)	Yes 41-2(b)
– participation through pattern or debt	Yes 7-15-2(c)	Yes 30-42-4C	Yes 3403(b)	Yes -6-2(a)(3)	Yes 41-2(c)
– conspiracy to do the above	NP	Yes 30-42-4D	Yes 3403(c)	NP	Yes 41-2(d)
5. Pattern	NP	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior 30-42-3D	2 rel., 1 after eff. date, 1 w/in 4 yrs. of prior excl. imprisonment 3402(d)	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior -6-1(c)	2 rel., 1 after eff. date, 1 w/ in 10 yrs. of prior excl. imprisonment 41-1d(1), (2)
6. Predicate offenses	Yes 7-15-1(a)	Yes 30-42-3A	Yes 3402(a), (b)	Yes -6-1(d)	Yes 41-1(a)
7. Person	Yes 7-15-1(b)	Yes 30-42-3B	NP	NP	Yes 41-1(b)
8. Enterprise	Yes 7-15-1(c)	Yes 30-42-3C	Yes 3402(c)	Yes -6-1(b)	Yes 41-1(c)
9. State of mind	NP	NP	NP	Knowledge or Intent -6-2	NP
SANCTIONS					
10. Sanctions					
– imprisonment	Yes 7-15-3	Fel. 2° or 3° 30-42-3	Yes, 3404(a)	Class C Felony -6-2	1° w/gun 2° w/out 41-3(a)
– fine	Yes 7-15-3	Fel 2° or 3° 30-42-4A-D	Up to $25,000 or 3x gain to $25,000 3404(a), (b)	Class C Felony -6-2	1° with gun/ 41-3(a) 2° w/ out gun 41-3(a)
– forfeiture	Yes 7-15-3	Yes 30-42-4E	Yes via Civil Proc. 3405(a)	NP	Yes 41-3(b)
– costs	NP	NP	NP	NP	NP
11. Injunctive relief					
– restraining order	NP	Yes 30-42-4F	NP	NP	Yes 41-3(c)
– racketeering lien	NP	Yes 30-42-4F	NP	NP	NP
CIVIL SUIT					
12. Proceeding allowed	Yes 7-15-4	Yes 30-42-6A	Yes 3405(a)	Yes 34-4-30.5	Yes 41-4
13. Brought by					
– AG	Yes 7-15-4(b)	Yes 30-42-6B	Yes 3405(f)(1)	NP	Yes 41-4(b)
– DA	NP	Yes 30-42-6B	Yes 3405(f)(1)	Pros. Atty. -30.5-2	NP
– Private Party	Yes 7-15-4(c)	Yes 30-42-6A	Yes 3405(f)(1)	Yes -30.5-2	Yes 41-4(c)
14. Court	Superior 7-15-4(a)	District 30-42-6A	Superior 3406(a)	Circuit or Superior -30.5-2	Superior 41-4(a)
15. Burden of Proof					
– Law	NP	NP	NP	Preponder. -30.5-2	NP
– Equity	NP	NP	NP	Preponder. -30.5-2	NP
16. Provision for innocent parties	Yes 7-15-4(a)	Yes 30-42-6C	Yes 3405(h)	Yes -30.5-2	Yes 41-4(a)
17. Preliminary relief	Yes 7-15-4(b)	Yes 30-42-6C	Yes 3406(b)	Yes -30.5-5(a)	Yes 41-4(b)
– harm requirement	NP	NP	Yes 3406(b)	Yes -30.5-5(a)	NP
– bond is an option	Yes 7-15-4(b)	Yes 30-42-6C	Yes 3406(b)	Yes -30.5-5(a)	Yes 41-4(b)

18. Showing for relief					
– general	NP	NP	Yes 3406(b)	Yes -30.5-5(a)	NP
– no special	NP	NP	Yes 3406(b)	Yes -30.5-5(a)	NP
19. Scope of equitable relief					
– divest	Yes 7-15-4(a)	Yes 30-42-6D1	Yes 3406(a)(1)	Yes -30.5-2(1)	Yes 41-4(a)(1)
– restrict	Yes 7-15-4(a)	Yes 30-42-6D2	Yes 3406(a)(2)	Yes -30.5-2(2)	Yes 41-4(a)(2)
– dissolve	Yes 7-15-4(a)	Yes 30-42-6D3	Yes 3406(a)(3)	Yes -30.5-2(3)	Yes 41-4(a)(3)
– reorganize	Yes 7-15-4(a)	Yes 30-42-6D3	Yes 3406(a)(3)	Yes -30.5-2(3)	Yes 41-4(a)(3)
– revoke permits	NP	NP	Yes 3406(a)(4)	Yes -30.5-2(4)	Yes 41-4(a)(5)
– forfeit charter	NP	NP	Yes 3406(a)(5)	Yes -30.5-2(5)	Yes 41-4(a)(4)
20. Scope of legal relief					
– amount	3x 7-15-4(c)	3x 30-42-6A	3x + punitive 3406(c)	3x + punitive -30.5-5(b)(1), (4)	3x 41-4(c)
– costs	Yes 7-15-4(c)	Yes 30-42-6A	Yes 3406(c)	Yes -30.5-5(b)(2)	Yes 41-4(c)
– attorney fees	Yes 7-15-4(c)	Yes 30-42-6A	Yes 3406(c)	Yes -30.5-5(b)(3)	Yes 41-4(c)
PROPERTY SUBJECT					
21. Type of property subject to forfeiture					
– real property	NP	NP	Yes 3405(a)	Yes -30.5-3	Yes 41-3(b)(2)
– personal property	NP	NP	Yes 3405(a)	Yes -30.5-3	Yes 41-3(b)(1)
– money	NP	NP	Yes 3405(a)	NP	Yes 41-3(b)(1)
– may substitute other property if forfeited property is not available	NP	NP	NP	NP	NP
PROCEDURE AND PRIORITY					
22. Civil Investigative Demand (subpoena and/or interrogatory)	Yes 7-15-7	NP	NP	NP	Yes 41-5
23. Seizure without process in certain instances	NP	NP	Yes 3405(d)(2)	Yes -30.5-4	NP
24. Relation back	NP	NP	Yes 3405(e)(11)(A)	NP	NP
25. Jury trial	NP	NP	Yes 3406(c)(1)	Yes -30.5-5(c)	NP
26. Estoppel	Yes 7-15-4(d)	NP	Yes 3406(d)	Yes -30.5-6	Yes 41-4(d)
27. Intervention by State	NP	NP	NP	NP	NP
28. Civil suit not precluded by criminal action	NP	NP	Yes 3408	NP	Yes 41-6.1
29. Priority of individual over State to compensation	NP	NP	Yes 3406(c)(2)	Yes -30.5-5(d)	NP
30. Fund for investigation and prosecution	NP	NP	NP	NP	Yes 41-3(b)
31. Reciprocity of enforcement	NP	NP	Yes 3409	NP	NP
32. Statute of limitation	NP	NP	5 yrs. suspended 3407	NP	NP
33. Construction	Liberal 7-15-10	Approved Usage 12-2-2	Fair Warning 26-102-b	Plain, ordinary usual sense 1-1-4-1	Liberal 41-6
34. Severability	Yes 7-15-11	NP	NP	NP	Yes 41-6.2
35. Findings and intent	NP	Yes 30-42-2	Yes 3401	NP	Yes 41-1.1

	Utah	Colorado	Idaho	Oregon	Wisconsin
ENACTED	July 1, 1981	1981	1981	1981	April 27, 1982
AMENDED					
CRIMINAL ACTION					
1. Proceeding allowed	Yes 76-10-1601	Yes 18-17-101	Yes 18-7801	Yes 166.715	Yes 946.80
2. Brought by					
AG	NP	NP	NP	NP	Yes 946.87(3)
DA	NP	NP	NP	NP	Yes 946.87(3)
3. Court	NP	NP	NP	NP	NP
ACTS					
4. Prohibited Activities					
– investment of $ from pattern or debt	Yes 1603(1)	Yes -104(1)	Yes 7804(a)	Yes .720(1)	Yes 946.83(1)
– investment or control through pattern or debt	Yes 1603(2)	Yes -104(2)	Yes 7804(b)	Yes .720(2)	Yes 946.83(2)
– participation through pattern or debt	Yes 1603(3)	Yes -104(3)	Yes 7804(c)	Yes .720(3)	Yes 946.83(3)
– conspiracy to do the above	Yes 1603(4)	Yes -104(4)	Yes 7804(d)	Yes .720(4)	NP
5. Pattern	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior 1602(4)	2 rel., 1 after eff. date, 1 w/in 10 yrs. of prior excl. imprisonment -103(3)	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior 7803(d)	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior .715(3)	3 rel., 1 after eff. date, last within 7 yrs. of prior. Mult. acts at same time & place count as 1 act 946.82(3)
6. Predicate offenses	Yes 1602(1)	Yes -103(5)	Yes 7803(a)	Yes .715(5)	Yes 946.82(4)
7. Person	Yes 1602(2)	Yes -103(4)	Yes 7803(b)	Yes .715(4)	NP
8. Enterprise	Yes 1602(3)	Yes -103(2)	Yes 7803(c)	Yes .715(2)	Yes 946.82(2)
9. State of mind	NP	NP	NP	NP	NP
SANCTIONS					
10. Sanctions					
– imprisonment	2° Felony 1603(5)	Class 2 Fel. -105(1)	Up to 14 yrs. 7804(e)	Class A Felony .720(5)(a)	Class C Fel. 946.84(1)
– fine	2° Felony 1603(5)	up to $25,000 -105(1)(a) up to 3x gain or harm -105(2)	Up to $25,000 7804(e)	Yes Or Up .730(5)(a) To 3x gain or harm .720(5)(b)	Up to 2x gain or loss 946.84(2)
– forfeiture	Yes 1603(5)	Yes -105(1)(b)	Yes 7804(f)	Yes .725	Yes 946.84(2)
– costs	NP	Yes with 3x fine or forfeiture -105(2) -105(6)(d)(II)	NP	Yes .720(5)(b)	Yes 946.84(2) greater penalties for "Continuing Criminal Enterprise" 946.85
11. Injunctive relief					
– restraining order	Yes 1603(6)	Yes -105(5)	Yes 7804(g)	Yes .725	NP
– racketeering lien	NP	NP	NP	NP	NP
CIVIL SUIT					
12. Proceeding allowed	Yes 1605(1)	Yes -106(5)	Yes 7805	Yes .725	Yes 946.86
13. Brought by					
– AG	Yes 1605(1)	Yes -106(5)	Yes 7805(b)	Yes .725(5)	Yes 946.86(3)
– DA	Yes 1605(1)	Yes -106(5)	Yes 7805(b)	Yes .725(5)	Yes 946.86(3)
– Private Party	Yes 1605(1)	Yes -106(6)	Yes 7805(a)	Yes .725(6)	Yes 946.86(4)
14. Court	District 1605(1)	District -106(1)	District 7805(c)	Circuit .725(1)	Circuit 946.86 Reas. Cert. 946.86(5)
15. Burden of Proof					
– Law	Preponder. 1605(2)	NP	NP	NP	
– Equity	Preponder. 1605(2)	NP	NP	NP	Reas. Cert. 946.86(5)

16. Provision for innocent parties	Yes 1605(2)	Yes -106(1)	Yes 7805(c)	Yes .725(1),(2)	Yes 946.86(1)
17. Preliminary relief	Yes 1605(3)	Yes -106(6)	Yes 7805(c)	Yes .725(5)	Yes 946.86(3)
– harm requirement	NP	Yes -106(6)	NP	NP	NP
– bond is an option	Yes 1605(3)	Yes -106(6)	Yes 7805(c)	Yes .725(5),(6)	Yes 946.86(3)
18. Showing for relief					
– general	NP	Yes -106(6)	NP	NP	NP
– no special	NP	Yes -106(6)	NP	Yes .725(6)	NP
19. Scope of equitable relief					
– divest	Yes 1605(4)(a)	Yes -106(1)(a)	Yes 7805(d)(1)	Yes .725(1)(a)	Yes 946.86(1)(a)
– restrict	Yes 1605(4)(b)	Yes -106(1)(b)	Yes 7805(d)(2)	Yes .725(1)(b)	Yes 946.86(1)(b)
– dissolve	Yes 1605(4)(c)	Yes -106(1)(c)	Yes 7805(d)(3)	Yes .725(1)(c)	Yes 946.86(1)(c)
– reorganize	Yes 1605(4)(c)	Yes -106(1)(c)	Yes 7805(d)(3)	Yes .725(1)(c)	Yes 946.86(1)(c)
– revoke permits	NP	Yes -106(1)(d)	Yes 7805(d)(5)	Yes .725(1)(d)	Yes 946.86(1)(d)
– forfeit charter	NP	Yes -106(1)(e)	Yes 7805(d)(6)	Yes .725(1)(e)	NP
20. Scope of legal relief					
– amount	3x + punitive 1605(1)	3x -106(7)	3x 7805(a)	3x + punitive .725(7)(a)	2x + punitive 946.86(4)
– costs	Yes 1605(1)	Yes -106(7)	Yes 7805(a)	Yes .725(7)(a)	Yes 946.86(4)
– attorney fees	Yes 1605(1)	Yes -106(7)	Yes 7805(a)	Yes .725(7)(a)	Yes 946.86(4)
PROPERTY SUBJECT					
21. Type of property subject to forfeiture					
– real property	Yes 1606(2)	Yes -106(2)	NP	Yes .725(2)	Yes 946.86(2)(a)
– personal property	Yes 1606(2)	Yes -106(2)	NP	Yes .725(2)	Yes 946.86(2)(a)
– money	NP	Yes -106(2)	NP	Yes .725(2)	Yes 946.86(2)(a)
– may substitute other property if forfeited property is not available	Yes 1606(3)	NP	NP	NP	NP
PROCEDURE AND PRIORITY					
22. Civil Investigative Demand (subpoena and/or interrogatory)	NP	Yes -107	NP	Yes .730	NP
23. Seizure without process in certain instances	NP	Yes -106(3)	NP	Yes .725(3)	NP
24. Relation back	NP	NP	NP	NP	NP
25. Jury trial	NP	Yes -106(7)(a)	NP	Yes .725(7)(b)	Yes 946.86(4)
26. Estoppel	Yes 1607	Yes -106(8)	NP	Yes .725(8)	Yes 946.86(6)
27. Intervention by State	NP	NP	NP	Yes .725(9)	NP
28. Civil suit not precluded by criminal action	NP	Yes -106(9)	NP	Yes .725(11)	Yes 946.87(2)
29. Priority of individual over State to compensation	NP	Yes -106(7)(b)	NP	Yes .725(7)(c)	Yes 946.86(2)(b)
30. Fund for investigation and prosecution	NP	NP	NP	NP	
31. Reciprocity of enforcement	NP	NP	NP	NP	NP
32. Statue of limitation	NP	NP	NP	5 yrs. suspended .725(10)	6 yrs. suspended 946.87(1)
33. Construction	Fair Import 76-1-106	Liberal -108	Liberal 73-102(1)	Liberal .735(2)	Reasonable Intendment 990.001
34. Severability	NP	Yes -109	NP	NP	
35. Findings and intent	NP	Yes -102	Yes 7802	NP	Yes 946.81

	Illinois**	California	Connecticut	North Dakota	Nevada
ENACTED	August 18, 1982	1982	1982	1983	July 1, 1983
AMENDED					
CRIMINAL ACTION					
1. Proceeding allowed	Yes 56 1/2 § 1651	Yes Penal § 186	Yes 53-393	Yes 121-06.1	Yes § 207.350
2. Brought by					
AG	Yes 1655 § 5(d)	Yes 186.2(c)	Yes -394(f)	NP	NP
DA	Yes 1655 § 5(d)	Yes 186.2(c)	Yes -394(f)	NP	Pros. Atty. 207.430
3. Court	NP	Superior 186.5(c)(1)	Superior -398(a)	NP	NP
ACTS					
4. Prohibited Activities					
– investment of $ from pattern or debt	Yes 1654 § 4(b)	NP	Yes -395(a)	NP	Yes 207.400(a)
– investment or control through pattern or debt	Yes 1654 § 4(c)	NP	Yes -395(b)	Yes -06.1-03(1)	Yes 207.400(b)
– participation through pattern or debt	Yes 1654 § 4(d)	NP	Yes -395(c)	Yes -06.1-03(2)	Yes 207.400(c)
– conspiracy to do the above	NP	NP	NP	NP	Yes 207.400(h)
5. Pattern	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior. At least 1 must be Class X, 1 or 2 Felony 1653 § 3(b)	2 rel., 1 after eff. date, 1 w/in 10 Yrs. of prior excl. imprisonment 186.2(b)	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior -394(c)	NP	2 rel., 1 after eff. date, 1 w/in 5 yrs. of prior 207.390
6. Predicate offenses	Yes 1653 § 3(a)(1), (2)	Yes 186.2(a)	Yes -394(a)	Yes -06.1-01(2)(d)	Yes 207.360
7. Person	Yes 1653 § 3(c)	NP	Yes -394(d)	NP	NP
8. Enterprise	Yes 1653 § 3(d)	NP	Yes -394(c)	Yes -06.1-01(2)(b)	Yes 207.370
9. State of mind	NP	NP	NP	Knowing -06.1-03(3)	NP
SANCTIONS					
10. Sanctions					
– imprisonment	Class I Fel. 1655 § 5a1	NP	1-20 yrs. -397(a)	Class B Felony - 06.1-03(3)	5-20 yrs. 207.400(2)
– fine	Up to $100,000 1655 § 5(a)(2)	NP	or Up to $25,000 -397(a)	Class B Felony - 06.1-03(3)	Up to $25,000 or 3x 207.400(2) gain/loss 207 410
– forfeiture	Yes 1655 § 5(a)(3)	Yes 186.3, 186.7(a)	Yes -397(a)	NP	Yes 207.420
– costs	NP	NP	NP	NP	Yes 207.410(2)
11. Injunctive relief					
– restraining order	Yes 1655 § 5(c)	Yes 186.6(a)	Yes -398(a)	Yes -06.1 -04	Yes 207.430
– racketeering lien	NP	NP	Yes -399(a), 402(c)	Yes -06.1 -06	NP
CIVIL SUIT					
12. Proceeding allowed	Yes 1657 § 7	NP	NP	Yes -06.1-05(1)	Yes 207.470
13. Brought by					
– AG	Yes 1656 § 6(b)	NP	NP	Yes -06.1-05(1)	Yes 207.490(4)
– DA	Yes 1656 § 6(b)	NP	NP	NP	Yes 207.490(4)
– Private Party	Yes 1657 § 7	NP	NP	Yes -06.1-05(1)	Yes 207.470(1)
14. Court	Circuit 1657 § 7	NP	NP	District -06.1-05(2)	District 297.470(3)
15. Burden of Proof					
– Law	NP	NP	NP	Preponder. -06.1-05	NP
– Equity	NP	NP	NP	Preponder. -06.1-05	NP
16. Provision for innocent parties	Yes 1656 § 6(a)	NP	NP	Yes 06.1-05(2)	Yes 207.500(2)

17. Preliminary relief	Yes 1656 § 6(b)	NP	NP	Yes 06.1-05(3)	Yes 207.490(5)
– harm requirement	NP	NP	NP	NP	NP
– bond is an option	Yes 1656 § 6(b)	NP	NP	Yes 06.1-05(3)	Yes 207.490(5)
18. Showing for relief					
– general	NP	NP	NP	NP	NP
– no special	NP	NP	NP	NP	NP
19. Scope of equitable relief					
– divest	Yes 1656 § 6(a)	NP	NP	Yes 06.1-05(4)(a)	NP
– restrict	Yes 1656 § 6(a)	NP	NP	Yes 06.1-05(4)(b)	NP
– dissolve	Yes 1656 § 6(a)	NP	NP	Yes 06.1-05(4)(c)	NP
– reorganize	Yes 1656 § 6(a)	NP	NP	Yes 06.1-05(4)(d)	NP
– revoke permits	NP	NP	NP	NP	NP
– forfeit charter	NP	NP	NP	NP	NP
20. Scope of legal relief					
– amount	3x 1656 § 6(c)	NP	NP	3x 06.1-05(1)	3x 207.470(1)
– costs	Yes 1656 § 6(c)	NP	NP	Yes 06.1-05(1)	Yes 207.470(1)
– attorney fees	Yes 1C56 § 6(c)	NP	NP	Yes 06.1-05(1)	Yes 207.470(1)
PROPERTY SUBJECT					
21. Type of property subject to forfeiture					
– real property	Yes 1655 § 5(a)(3)	Yes 186.3(b), (c)	NP	Yes 06.1-05(4)(f)(1)	Yes 207.460(a)
– personal property	Yes 1655 § 5(a)(3)	Yes 186.3(b), (c)	NP	Yes 06.1-05(4)(f)(2)	Yes 207.460(a)
– money	Yes 1655 § 5(a)(3)	NP	NP	Yes 06.1-05(4)(f)(3)	Yes 207.460(a)
– may substitute other property if forfeited property is not available	NP	NP	NP	Yes 06.1-05(4)(g)	Yes 207.420(3)
PROCEDURE AND PRIORITY					
22. Civil Investigative Demand (subpoena and/or interrogatory)	NP	NP	NP	Yes 06.1-07	NP
23. Seizure without process in certain instances	NP	NP	NP	NP	Yes 207.490(1)
24. Relation back	NP	NP	NP	Yes 06.1-06	NP
25. Jury trial	NP	NP	NP	NP	Yes 207.470(1)
26. Estoppel	Yes 1656 § 6(d)	NP	NP	Yes 06.1-05(6)	Yes 207.470(2)
27. Intervention by State	NP	NP	NP	Yes 06.1-05(10)	Yes 207.490(4)
28. Civil suit not precluded by criminal action	NP	NP	NP	Yes 06.1-05(13)	Yes 207.470(4)
29. Priority of individual over State to compensation	NP	NP	NP	NP	Yes 207.470(1)
30. Fund for investigation and prosecution	Yes 1655 5(g)	NP	NP	NP	NP
31. Reciprocity of enforcement	NP	NP	NP	NP	NP
32. Statue of limitation	NP	NP	NP	7 yrs. 06.1-05(7)	5 years suspended 207.520
33. Construction	Liberal 1658 § 8	NP	NP	Liberal 1-02-01	Fair Import 193.030
34. Severability	Yes 1659 § 9	NP	Yes -403(b)	NP	NP
35. Findings and intent	Yes 1652 § 2	Yes 186.1	NP	NP	NP

*NP means No Provision in the statute for this item.
**The provisions of this statute apply only to Drug Racketeering.

Appendix B

The Racketeer Influenced and Corrupt Organizations Statute

WHEREAS, Congress enacted in 1970 the Racketeer Influenced and Corrupt Organizations provisions (Title IX) of the Organized Crime Control Act; and

WHEREAS, Title IX is applicable to patterns of racketeering activity involving:

1. personal violence;
2. provision of illegal goods and services;
3. corruption in private or public life; and
4. various forms of fraud; and

WHEREAS, Title IX provides important new criminal and civil sanctions to protect victims of racketeering activity, including,

1. criminal forfeiture of proceeds of racketeering activity;
2. criminal forfeiture of interests in enterprises;
3. equitable relief for the government;
4. equitable relief for victims of racketeering activity; and
5. treble damages, costs and attorneys fees for victims of racketeering activity; and

WHEREAS, twenty-two States have enacted legislation patterned after Title IX; and

WHEREAS, other States are actively considering the passage of legislation patterned after Title IX; and

WHEREAS, state and local units of government have begun to make effective use of Title IX and state legislation patterned after it; and

WHEREAS, Title IX provides important new sanctions in the area of fraud against state and local units of government; and

WHEREAS, fraud against state and local government has a multi-billion dollar annual import; and

WHEREAS, state and local units of government have found that Title IX and state legislation patterned after it are effective and essential means of redressing wrongs;

NOW, THEREFORE, BE IT RESOLVED, that the National Association of Attorneys General supports efforts by states to enact legislation patterned after Title IX and to strengthen the criminal and civil provisions of Title IX, particularly in their application to public and private civil sanctions in the area of fraud against the government; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General opposes efforts to repeal or modify, in whole or in part, the provisions of Title IX, particularly in their application to public and private civil sanctions in the area of fraud against the government; and

BE IT FURTHER RESOLVED, that the Executive Director and General Counsel of the National Association of Attorneys General is authorized to transmit this Resolution to appropriate committees of Congress, the Administration, and other appropriate individuals and associations.